

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
Richmond Division**

ROBERTO BAPTIST	)	
	)	
Plaintiff,	)	
	)	Case No. 3:19-CV-00186-REP
v.	)	
	)	
ZURICH AMERICAN INSURANCE	)	
COMPANY,	)	
	)	
Defendant.	)	

**ANSWER TO THE COMPLAINT**

Defendant, Zurich American Insurance Company (“ZAIC”), by counsel, Eckert Seamans Cherin & Mellott, LLC, hereby files its Answer and states as follows:

1. Defendant admits that Plaintiff is a resident of the Commonwealth of Virginia, and that at the time referenced, Defendant was licensed to provide insurance in the Commonwealth of Virginia. Otherwise, Defendant denies the allegations of paragraph 1 of the Complaint.

2. Defendant denies the allegations of paragraph 2 of the Complaint.

3. Defendant avers that the document referenced in paragraph 3 of the Complaint speaks for itself regarding the terms and conditions of payment which have not been met by Plaintiff. Otherwise, the remaining allegations and all inferences contained therein are denied.

4. Defendant avers that Plaintiff claims a workplace accident, and denies the remaining allegations of paragraph 4 of the Complaint.

**BAD FAITH**

5. Defendant avers that Plaintiff made a claim for payment, but denies that Plaintiff was entitled to payment under the policy, and denies the remaining allegations of paragraph 5 of the Complaint.

6. Defendant admits that the policy is titled “Truckers Occupational Accident Insurance Policy,” and the policy terms and conditions speak for themselves. The remaining allegations and inferences contained in paragraph 6 of the Complaint are neither admitted nor denied and require a legal determination, and are otherwise denied.

7. Defendant denies the allegations of paragraph 7 of the Complaint.

**BREACH OF FIDUCIARY DUTY**

8. Defendant denies the allegations of paragraph 8 of the Complaint.

9. Defendant denies the allegations of paragraph 9 of the Complaint.

10. Defendant denies the allegations of paragraph 10 of the Complaint.

11. Defendant denies the allegations of paragraph 11 of the Complaint.

12. Defendant denies the allegations of paragraph 12 of the Complaint.

13. Defendant denies the allegations of paragraph 13 of the Complaint.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

Plaintiff’s Complaint fails to state a claim upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

Plaintiff’s claims are barred by the terms of the policy.

**THIRD AFFIRMATIVE DEFENSE**

Plaintiff’s claims are barred by the principles of release, mistake, and/or unclean hands.

**FOURTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred by Defendant's full performance of any act, agreement, contract, or fiduciary duty required of it, if there existed such agreement, contract, or fiduciary duty.

**FIFTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred by Plaintiff's failure to meet a condition precedent and the claim is premature.

**SIXTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred by Plaintiff's non-compliance with contractual terms.

**SEVENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred by Plaintiff's non-performance with contractual terms.

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiff failed to mitigate damages or otherwise act to lessen or reduce his damages.

**NINTH AFFIRMATIVE DEFENSE**

Plaintiff is bound to elect his remedies, if any, to which he is entitled.

**TENTH AFFIRMATIVE DEFENSE**

Defendant denies those allegations not specifically responded to.

Wherefore, Defendant, having answered the allegations contained in Plaintiff's Complaint, requests dismissal of the Complaint, along with costs and attorneys' fees as appropriate.

DATED: March 25, 2019

By: /s/ Edward J. Longosz, II  
Edward J. Longosz, II (VSB #39411)  
Kennedy C. Ramos (VSB #92141)  
ECKERT SEAMANS CHERIN  
& MELLOTT, LLC  
1717 Pennsylvania Avenue, NW  
Suite 1200  
Washington, D.C. 20006  
(202) 659-6619/6675  
(202) 659-6699 – Fax  
*Attorneys for Defendant ZAIC*  
elongosz@eckertseamans.com  
kramos@eckertseamans.com

**CERTIFICATE OF SERVICE**

I certify that on March 25, 2019, a true and correct copy of the foregoing Answer to the Complaint was filed with the Clerk of the Court, and served upon the persons below, via this Court's CM/ECF system.

Horace F. Hunter, Esq.  
Hunter & Everage  
217 EAST CLAY STREET  
RICHMOND VA 23219  
hfh@hunter-everage.com  
864.780.1235  
Attorney for Plaintiff Roberto Baptist

/s/ Edward J. Longosz, II  
Edward J. Longosz, II